

32B-1-101. Title.

- (1) This title is known as the "Alcoholic Beverage Control Act."
- (2) This chapter is known as "Alcoholic Beverage Control General Provisions."

Enacted by Chapter 276, 2010 General Session

32B-1-102. Definitions.

As used in this title:

- (1) "Airport lounge" means a business location:
 - (a) at which an alcoholic product is sold at retail for consumption on the premises; and
 - (b) that is located at an international airport with a United States Customs office on the premises of the international airport.
- (2) "Airport lounge license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 5, Airport Lounge License.
- (3) "Alcoholic beverage" means the following:
 - (a) beer; or
 - (b) liquor.
- (4) (a) "Alcoholic product" means a product that:
 - (i) contains at least .5% of alcohol by volume; and
 - (ii) is obtained by fermentation, infusion, decoction, brewing, distillation, or other process that uses liquid or combinations of liquids, whether drinkable or not, to create alcohol in an amount equal to or greater than .5% of alcohol by volume.
 - (b) "Alcoholic product" includes an alcoholic beverage.
 - (c) "Alcoholic product" does not include any of the following common items that otherwise come within the definition of an alcoholic product:
 - (i) except as provided in Subsection (4)(d), an extract;
 - (ii) vinegar;
 - (iii) cider;
 - (iv) essence;
 - (v) tincture;
 - (vi) food preparation; or
 - (vii) an over-the-counter medicine.
 - (d) "Alcoholic product" includes an extract containing alcohol obtained by distillation when it is used as a flavoring in the manufacturing of an alcoholic product.
- (5) "Alcohol training and education seminar" means a seminar that is:
 - (a) required by Chapter 5, Part 4, Alcohol Training and Education Act; and
 - (b) described in Section 62A-15-401.
- (6) "Banquet" means an event:
 - (a) that is held at one or more designated locations approved by the commission in or on the premises of a:
 - (i) hotel;
 - (ii) resort facility;
 - (iii) sports center; or
 - (iv) convention center;
 - (b) for which there is a contract:

(i) between a person operating a facility listed in Subsection (6)(a) and another person; and

(ii) under which the person operating a facility listed in Subsection (6)(a) is required to provide an alcoholic product at the event; and

(c) at which food and alcoholic products may be sold, offered for sale, or furnished.

(7) (a) "Bar" means a surface or structure:

(i) at which an alcoholic product is:

(A) stored; or

(B) dispensed; or

(ii) from which an alcoholic product is served.

(b) "Bar structure" means a surface or structure on a licensed premises if on or at any place of the surface or structure an alcoholic product is:

(i) stored; or

(ii) dispensed.

(8) (a) Subject to Subsection (8)(d), "beer" means a product that:

(i) contains at least .5% of alcohol by volume, but not more than 4% of alcohol by volume or 3.2% by weight; and

(ii) is obtained by fermentation, infusion, or decoction of malted grain.

(b) "Beer" may or may not contain hops or other vegetable products.

(c) "Beer" includes a product that:

(i) contains alcohol in the percentages described in Subsection (8)(a); and

(ii) is referred to as:

(A) beer;

(B) ale;

(C) porter;

(D) stout;

(E) lager; or

(F) a malt or malted beverage.

(d) "Beer" does not include a flavored malt beverage.

(9) "Beer-only restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 9, Beer-only Restaurant License.

(10) "Beer retailer" means a business:

(a) that is engaged, primarily or incidentally, in the retail sale of beer to a patron, whether for consumption on or off the business premises; and

(b) to whom a license is issued:

(i) for an off-premise beer retailer, in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local Authority; or

(ii) for an on-premise beer retailer, in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer Retailer License.

(11) "Beer wholesaling license" means a license:

(a) issued in accordance with Chapter 13, Beer Wholesaling License Act; and

(b) to import for sale, or sell beer in wholesale or jobbing quantities to one or more retail licensees or off-premise beer retailers.

(12) "Billboard" means a public display used to advertise, including:

(a) a light device;

- (b) a painting;
 - (c) a drawing;
 - (d) a poster;
 - (e) a sign;
 - (f) a signboard; or
 - (g) a scoreboard.
- (13) "Brewer" means a person engaged in manufacturing:
- (a) beer;
 - (b) heavy beer; or
 - (c) a flavored malt beverage.
- (14) "Brewery manufacturing license" means a license issued in accordance with Chapter 11, Part 5, Brewery Manufacturing License.
- (15) "Certificate of approval" means a certificate of approval obtained from the department under Section 32B-11-201.
- (16) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by a bus company to a group of persons pursuant to a common purpose:
- (a) under a single contract;
 - (b) at a fixed charge in accordance with the bus company's tariff; and
 - (c) to give the group of persons the exclusive use of the passenger bus, coach, or other motor vehicle, and a driver to travel together to one or more specified destinations.
- (17) "Church" means a building:
- (a) set apart for worship;
 - (b) in which religious services are held;
 - (c) with which clergy is associated; and
 - (d) that is tax exempt under the laws of this state.
- (18) (a) "Club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License.
- (b) "Club license" includes:
- (i) a dining club license;
 - (ii) an equity club license;
 - (iii) a fraternal club license; or
 - (iv) a social club license.
- (19) "Commission" means the Alcoholic Beverage Control Commission created in Section 32B-2-201.
- (20) "Commissioner" means a member of the commission.
- (21) "Community location" means:
- (a) a public or private school;
 - (b) a church;
 - (c) a public library;
 - (d) a public playground; or
 - (e) a public park.
- (22) "Community location governing authority" means:
- (a) the governing body of the community location; or
 - (b) if the commission does not know who is the governing body of a community location, a person who appears to the commission to have been given on behalf of the

community location the authority to prohibit an activity at the community location.

(23) "Container" means a receptacle that contains an alcoholic product, including:

- (a) a bottle;
- (b) a vessel; or
- (c) a similar item.

(24) "Convention center" means a facility that is:

- (a) in total at least 30,000 square feet; and
- (b) otherwise defined as a "convention center" by the commission by rule.

(25) (a) Subject to Subsection (25)(b), "counter" means a surface or structure in a dining area of a licensed premises where seating is provided to a patron for service of food.

(b) "Counter" does not include a surface or structure if on or at any point of the surface or structure an alcoholic product is:

- (i) stored; or
- (ii) dispensed.

(26) "Department" means the Department of Alcoholic Beverage Control created in Section 32B-2-203.

(27) "Department compliance officer" means an individual who is:

- (a) an auditor or inspector; and
- (b) employed by the department.

(28) "Department sample" means liquor that is placed in the possession of the department for testing, analysis, and sampling.

(29) "Dining club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a dining club license.

(30) "Director," unless the context requires otherwise, means the director of the department.

(31) "Disciplinary proceeding" means an adjudicative proceeding permitted under this title:

- (a) against a person subject to administrative action; and
- (b) that is brought on the basis of a violation of this title.

(32) (a) Subject to Subsection (32)(b), "dispense" means:

(i) drawing of an alcoholic product:

(A) from an area where it is stored; or

(B) as provided in Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii), 32B-6-805(15)(b)(ii), or 32B-6-905(12)(b)(ii); and

(ii) using the alcoholic product described in Subsection (32)(a)(i) on the premises of the licensed premises to mix or prepare an alcoholic product to be furnished to a patron of the retail licensee.

(b) The definition of "dispense" in this Subsection (32) applies only to:

- (i) a full-service restaurant license;
- (ii) a limited-service restaurant license;
- (iii) a reception center license; and
- (iv) a beer-only restaurant license.

(33) "Distillery manufacturing license" means a license issued in accordance

with Chapter 11, Part 4, Distillery Manufacturing License.

(34) "Distressed merchandise" means an alcoholic product in the possession of the department that is saleable, but for some reason is unappealing to the public.

(35) "Educational facility" includes:

- (a) a nursery school;
- (b) an infant day care center; and
- (c) a trade and technical school.

(36) "Equity club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as an equity club license.

(37) "Event permit" means:

- (a) a single event permit; or
- (b) a temporary beer event permit.

(38) "Exempt license" means a license exempt under Section 32B-1-201 from being considered in determining the total number of a retail license that the commission may issue at any time.

(39) (a) "Flavored malt beverage" means a beverage:

- (i) that contains at least .5% alcohol by volume;
- (ii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of a beer as described in 27 C.F.R. Sec. 25.55;
- (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract; and
- (iv) (A) for which the producer is required to file a formula for approval with the federal Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 C.F.R. Sec. 25.55; or

(B) that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.

(b) "Flavored malt beverage" is considered liquor for purposes of this title.

(40) "Fraternal club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a fraternal club license.

(41) "Full-service restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 2, Full-service Restaurant License.

(42) (a) "Furnish" means by any means to provide with, supply, or give an individual an alcoholic product, by sale or otherwise.

(b) "Furnish" includes to:

- (i) serve;
- (ii) deliver; or
- (iii) otherwise make available.

(43) "Guest" means an individual who meets the requirements of Subsection 32B-6-407(9).

(44) "Health care practitioner" means:

- (a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;
- (b) an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;

- (c) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;
- (d) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy Practice Act;
- (e) a nurse or advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act;
- (f) a recreational therapist licensed under Title 58, Chapter 40, Recreational Therapy Practice Act;
- (g) an occupational therapist licensed under Title 58, Chapter 42a, Occupational Therapy Practice Act;
- (h) a nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act;
- (i) a mental health professional licensed under Title 58, Chapter 60, Mental Health Professional Practice Act;
- (j) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act;
- (k) an osteopath licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
- (l) a dentist or dental hygienist licensed under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act; and
- (m) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Act.

(45) (a) "Heavy beer" means a product that:

- (i) contains more than 4% alcohol by volume; and
 - (ii) is obtained by fermentation, infusion, or decoction of malted grain.
- (b) "Heavy beer" is considered liquor for the purposes of this title.

(46) "Hotel" is as defined by the commission by rule.

(47) "Identification card" means an identification card issued under Title 53, Chapter 3, Part 8, Identification Card Act.

(48) "Industry representative" means an individual who is compensated by salary, commission, or other means for representing and selling an alcoholic product of a manufacturer, supplier, or importer of liquor.

(49) "Industry representative sample" means liquor that is placed in the possession of the department for testing, analysis, and sampling by a local industry representative on the premises of the department to educate the local industry representative of the quality and characteristics of the product.

(50) "Interdicted person" means a person to whom the sale, offer for sale, or furnishing of an alcoholic product is prohibited by:

- (a) law; or
- (b) court order.

(51) "Intoxicated" means that a person:

- (a) is significantly impaired as to the person's mental or physical functions as a result of the use of:
 - (i) an alcoholic product;
 - (ii) a controlled substance;
 - (iii) a substance having the property of releasing toxic vapors; or
 - (iv) a combination of Subsections (51)(a)(i) through (iii); and
- (b) exhibits plain and easily observed outward manifestations of behavior or

physical signs produced by the over consumption of an alcoholic product.

(52) "Investigator" means an individual who is:

- (a) a department compliance officer; or
- (b) a nondepartment enforcement officer.

(53) "Invitee" is as defined in Section 32B-8-102.

(54) "License" means:

- (a) a retail license;
- (b) a license issued in accordance with Chapter 11, Manufacturing and Related Licenses Act;
- (c) a license issued in accordance with Chapter 12, Liquor Warehousing License Act; or
- (d) a license issued in accordance with Chapter 13, Beer Wholesaling License Act.

(55) "Licensee" means a person who holds a license.

(56) "Limited-service restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 3, Limited-service Restaurant License.

(57) "Limousine" means a motor vehicle licensed by the state or a local authority, other than a bus or taxicab:

- (a) in which the driver and a passenger are separated by a partition, glass, or other barrier;
- (b) that is provided by a business entity to one or more individuals at a fixed charge in accordance with the business entity's tariff; and
- (c) to give the one or more individuals the exclusive use of the limousine and a driver to travel to one or more specified destinations.

(58) (a) (i) "Liquor" means a liquid that:

(A) is:

- (I) alcohol;
- (II) an alcoholic, spirituous, vinous, fermented, malt, or other liquid;
- (III) a combination of liquids a part of which is spirituous, vinous, or fermented;

or

(IV) other drink or drinkable liquid; and

(B) (I) contains at least .5% alcohol by volume; and

(II) is suitable to use for beverage purposes.

(ii) "Liquor" includes:

- (A) heavy beer;
- (B) wine; and
- (C) a flavored malt beverage.

(b) "Liquor" does not include beer.

(59) "Liquor Control Fund" means the enterprise fund created by Section 32B-2-301.

(60) "Liquor warehousing license" means a license that is issued:

- (a) in accordance with Chapter 12, Liquor Warehousing License Act; and
- (b) to a person, other than a licensed manufacturer, who engages in the importation for storage, sale, or distribution of liquor regardless of amount.

(61) "Local authority" means:

(a) for premises that are located in an unincorporated area of a county, the governing body of a county; or

(b) for premises that are located in an incorporated city or a town, the governing body of the city or town.

(62) "Lounge or bar area" is as defined by rule made by the commission.

(63) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or otherwise make an alcoholic product for personal use or for sale or distribution to others.

(64) "Member" means an individual who, after paying regular dues, has full privileges in an equity club licensee or fraternal club licensee.

(65) (a) "Military installation" means a base, air field, camp, post, station, yard, center, or homeport facility for a ship:

(i) (A) under the control of the United States Department of Defense; or

(B) of the National Guard;

(ii) that is located within the state; and

(iii) including a leased facility.

(b) "Military installation" does not include a facility used primarily for:

(i) civil works;

(ii) a rivers and harbors project; or

(iii) a flood control project.

(66) "Minor" means an individual under the age of 21 years.

(67) "Nondepartment enforcement agency" means an agency that:

(a) (i) is a state agency other than the department; or

(ii) is an agency of a county, city, or town; and

(b) has a responsibility to enforce one or more provisions of this title.

(68) "Nondepartment enforcement officer" means an individual who is:

(a) a peace officer, examiner, or investigator; and

(b) employed by a nondepartment enforcement agency.

(69) (a) "Off-premise beer retailer" means a beer retailer who is:

(i) licensed in accordance with Chapter 7, Part 2, Off-premise Beer Retailer Local Authority; and

(ii) engaged in the retail sale of beer to a patron for consumption off the beer retailer's premises.

(b) "Off-premise beer retailer" does not include an on-premise beer retailer.

(70) "On-premise banquet license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 6, On-premise Banquet License.

(71) "On-premise beer retailer" means a beer retailer who is:

(a) authorized to sell, offer for sale, or furnish beer under a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer Retailer License; and

(b) engaged in the sale of beer to a patron for consumption on the beer retailer's premises:

(i) regardless of whether the beer retailer sells beer for consumption off the licensed premises; and

(ii) on and after March 1, 2012, operating:

(A) as a tavern; or

(B) in a manner that meets the requirements of Subsection 32B-6-703(2)(e)(i).

(72) "Opaque" means impenetrable to sight.

(73) "Package agency" means a retail liquor location operated:

(a) under an agreement with the department; and

(b) by a person:

(i) other than the state; and

(ii) who is authorized by the commission in accordance with Chapter 2, Part 6, Package Agency, to sell packaged liquor for consumption off the premises of the package agency.

(74) "Package agent" means a person who holds a package agency.

(75) "Patron" means an individual to whom food, beverages, or services are sold, offered for sale, or furnished, or who consumes an alcoholic product including:

(a) a customer;

(b) a member;

(c) a guest;

(d) an attendee of a banquet or event;

(e) an individual who receives room service;

(f) a resident of a resort;

(g) a public customer under a resort spa sublicense, as defined in Section 32B-8-102; or

(h) an invitee.

(76) "Permittee" means a person issued a permit under:

(a) Chapter 9, Event Permit Act; or

(b) Chapter 10, Special Use Permit Act.

(77) "Person subject to administrative action" means:

(a) a licensee;

(b) a permittee;

(c) a manufacturer;

(d) a supplier;

(e) an importer;

(f) one of the following holding a certificate of approval:

(i) an out-of-state brewer;

(ii) an out-of-state importer of beer, heavy beer, or flavored malt beverages; or

(iii) an out-of-state supplier of beer, heavy beer, or flavored malt beverages; or

(g) staff of:

(i) a person listed in Subsections (77)(a) through (f); or

(ii) a package agent.

(78) "Premises" means a building, enclosure, or room used in connection with the storage, sale, furnishing, consumption, manufacture, or distribution, of an alcoholic product, unless otherwise defined in this title or rules made by the commission.

(79) "Prescription" means an order issued by a health care practitioner when:

(a) the health care practitioner is licensed under Title 58, Occupations and Professions, to prescribe a controlled substance, other drug, or device for medicinal purposes;

(b) the order is made in the course of that health care practitioner's professional practice; and

(c) the order is made for obtaining an alcoholic product for medicinal purposes only.

(80) (a) "Private event" means a specific social, business, or recreational event:

(i) for which an entire room, area, or hall is leased or rented in advance by an identified group; and

(ii) that is limited in attendance to people who are specifically designated and their guests.

(b) "Private event" does not include an event to which the general public is invited, whether for an admission fee or not.

(81) (a) "Proof of age" means:

(i) an identification card;

(ii) an identification that:

(A) is substantially similar to an identification card;

(B) is issued in accordance with the laws of a state other than Utah in which the identification is issued;

(C) includes date of birth; and

(D) has a picture affixed;

(iii) a valid driver license certificate that:

(A) includes date of birth;

(B) has a picture affixed; and

(C) is issued:

(I) under Title 53, Chapter 3, Uniform Driver License Act; or

(II) in accordance with the laws of the state in which it is issued;

(iv) a military identification card that:

(A) includes date of birth; and

(B) has a picture affixed; or

(v) a valid passport.

(b) "Proof of age" does not include a driving privilege card issued in accordance with Section 53-3-207.

(82) (a) "Public building" means a building or permanent structure that is:

(i) owned or leased by:

(A) the state; or

(B) a local government entity; and

(ii) used for:

(A) public education;

(B) transacting public business; or

(C) regularly conducting government activities.

(b) "Public building" does not include a building owned by the state or a local government entity when the building is used by a person, in whole or in part, for a proprietary function.

(83) "Public conveyance" means a conveyance to which the public or a portion of the public has access to and a right to use for transportation, including an airline, railroad, bus, boat, or other public conveyance.

(84) "Reception center" means a business that:

(a) operates facilities that are at least 5,000 square feet; and

(b) has as its primary purpose the leasing of the facilities described in

Subsection (84)(a) to a third party for the third party's event.

(85) "Reception center license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 8, Reception Center License.

(86) (a) "Record" means information that is:

(i) inscribed on a tangible medium; or
(ii) stored in an electronic or other medium and is retrievable in a perceivable form.

(b) "Record" includes:

(i) a book;
(ii) a book of account;
(iii) a paper;
(iv) a contract;
(v) an agreement;
(vi) a document; or
(vii) a recording in any medium.

(87) "Residence" means a person's principal place of abode within Utah.

(88) "Resident," in relation to a resort, is as defined in Section 32B-8-102.

(89) "Resort" is as defined in Section 32B-8-102.

(90) "Resort facility" is as defined by the commission by rule.

(91) "Resort license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 8, Resort License Act.

(92) "Restaurant" means a business location:

(a) at which a variety of foods are prepared;
(b) at which complete meals are served to the general public; and
(c) that is engaged primarily in serving meals to the general public.

(93) "Retail license" means one of the following licenses issued under this title:

(a) a full-service restaurant license;
(b) a master full-service restaurant license;
(c) a limited-service restaurant license;
(d) a master limited-service restaurant license;
(e) a club license;
(f) an airport lounge license;
(g) an on-premise banquet license;
(h) an on-premise beer license;
(i) a reception center license; or
(j) a beer-only restaurant license.

(94) "Room service" means furnishing an alcoholic product to a person in a guest room of a:

(a) hotel; or
(b) resort facility.

(95) "Serve" means to place an alcoholic product before an individual.

(96) (a) "School" means a building used primarily for the general education of minors.

(b) "School" does not include an educational facility.

(97) "Sell" or "offer for sale" means a transaction, exchange, or barter whereby, for consideration, an alcoholic product is either directly or indirectly transferred,

solicited, ordered, delivered for value, or by a means or under a pretext is promised or obtained, whether done by a person as a principal, proprietor, or as staff, unless otherwise defined in this title or the rules made by the commission.

(98) "Sexually oriented entertainer" means a person who while in a state of seminudity appears at or performs:

- (a) for the entertainment of one or more patrons;
- (b) on the premises of:
 - (i) a social club licensee; or
 - (ii) a tavern;
- (c) on behalf of or at the request of the licensee described in Subsection (98)(b);
- (d) on a contractual or voluntary basis; and
- (e) whether or not the person is designated as:
 - (i) an employee;
 - (ii) an independent contractor;
 - (iii) an agent of the licensee; or
 - (iv) a different type of classification.

(99) "Single event permit" means a permit issued in accordance with Chapter 9, Part 3, Single Event Permit.

(100) "Small brewer" means a brewer who manufactures less than 60,000 barrels of beer, heavy beer, and flavored malt beverages per year.

(101) "Social club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, Club License, that is designated by the commission as a social club license.

(102) "Special use permit" means a permit issued in accordance with Chapter 10, Special Use Permit Act.

(103) (a) "Spirituous liquor" means liquor that is distilled.

(b) "Spirituous liquor" includes an alcoholic product defined as a "distilled spirit" by 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 5.11 through 5.23.

(104) "Sports center" is as defined by the commission by rule.

(105) (a) "Staff" means an individual who engages in activity governed by this title:

(i) on behalf of a business, including a package agent, licensee, permittee, or certificate holder;

(ii) at the request of the business, including a package agent, licensee, permittee, or certificate holder; or

(iii) under the authority of the business, including a package agent, licensee, permittee, or certificate holder.

(b) "Staff" includes:

- (i) an officer;
- (ii) a director;
- (iii) an employee;
- (iv) personnel management;
- (v) an agent of the licensee, including a managing agent;
- (vi) an operator; or
- (vii) a representative.

(106) "State of nudity" means:

- (a) the appearance of:
 - (i) the nipple or areola of a female human breast;
 - (ii) a human genital;
 - (iii) a human pubic area; or
 - (iv) a human anus; or
- (b) a state of dress that fails to opaquely cover:
 - (i) the nipple or areola of a female human breast;
 - (ii) a human genital;
 - (iii) a human pubic area; or
 - (iv) a human anus.

(107) "State of seminudity" means a state of dress in which opaque clothing covers no more than:

- (a) the nipple and areola of the female human breast in a shape and color other than the natural shape and color of the nipple and areola; and
- (b) the human genitals, pubic area, and anus:
 - (i) with no less than the following at its widest point:
 - (A) four inches coverage width in the front of the human body; and
 - (B) five inches coverage width in the back of the human body; and
 - (ii) with coverage that does not taper to less than one inch wide at the narrowest point.

(108) (a) "State store" means a facility for the sale of packaged liquor:

- (i) located on premises owned or leased by the state; and
 - (ii) operated by a state employee.
- (b) "State store" does not include:
- (i) a package agency;
 - (ii) a licensee; or
 - (iii) a permittee.

(109) (a) "Storage area" means an area on licensed premises where the licensee stores an alcoholic product.

(b) "Store" means to place or maintain in a location an alcoholic product from which a person draws to prepare an alcoholic product to be furnished to a patron, except as provided in Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii), 32B-6-805(15)(b)(ii), or 32B-6-905(12)(b)(ii).

(110) "Sublicense" is as defined in Section 32B-8-102.

(111) "Supplier" means a person who sells an alcoholic product to the department.

(112) "Tavern" means an on-premise beer retailer who is:

- (a) issued a license by the commission in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-premise Beer Retailer License; and
- (b) designated by the commission as a tavern in accordance with Chapter 6, Part 7, On-premise Beer Retailer License.

(113) "Temporary beer event permit" means a permit issued in accordance with Chapter 9, Part 4, Temporary Beer Event Permit.

(114) "Temporary domicile" means the principal place of abode within Utah of a person who does not have a present intention to continue residency within Utah permanently or indefinitely.

(115) "Translucent" means a substance that allows light to pass through, but does not allow an object or person to be seen through the substance.

(116) "Unsaleable liquor merchandise" means a container that:

(a) is unsaleable because the container is:

(i) unlabeled;

(ii) leaky;

(iii) damaged;

(iv) difficult to open; or

(v) partly filled;

(b) (i) has faded labels or defective caps or corks;

(ii) has contents that are:

(A) cloudy;

(B) spoiled; or

(C) chemically determined to be impure; or

(iii) contains:

(A) sediment; or

(B) a foreign substance; or

(c) is otherwise considered by the department as unfit for sale.

(117) (a) "Wine" means an alcoholic product obtained by the fermentation of the natural sugar content of fruits, plants, honey, or milk, or other like substance, whether or not another ingredient is added.

(b) "Wine" is considered liquor for purposes of this title, except as otherwise provided in this title.

(118) "Winery manufacturing license" means a license issued in accordance with Chapter 11, Part 3, Winery Manufacturing License.

Amended by Chapter 349, 2013 General Session

32B-1-103. Policy.

The policies of the state are as follows:

(1) This title shall be administered in a manner that is nonpartisan and free of partisan political influence.

(2) Alcoholic product control shall be operated as a public business using sound management principles and practices. This public business shall:

(a) be governed by a commission;

(b) be operated by a department; and

(c) function with the intent of servicing the public demand for alcoholic products.

(3) The commission and department may not promote or encourage the sale or consumption of alcoholic products.

(4) The commission shall conduct, license, and regulate the sale of alcoholic products in a manner and at prices that:

(a) reasonably satisfy the public demand and protect the public interest, including the rights of citizens who do not wish to be involved with alcoholic products; and

(b) will promote the reduction of the harmful effects of:

(i) over consumption of alcoholic products by adults; and

- (ii) consumption of alcoholic products by minors.

Enacted by Chapter 276, 2010 General Session

32B-1-104. Exercise of police powers -- Severability.

(1) This title is an exercise of the police powers of the state for the protection of the public health, peace, safety, welfare, and morals, and regulates the storage, sale, offer for sale, furnishing, consumption, manufacture, and distribution of an alcoholic product. This title governs alcoholic product control unless otherwise provided in this title.

(2) If a provision of this title or the application of a provision to a person or circumstance is held invalid, the remainder of this title shall be given effect without the invalid provision or application. The provisions of this title are severable.

Enacted by Chapter 276, 2010 General Session

32B-1-201. Restrictions on number of retail licenses that may be issued -- Determining population -- Exempt licenses.

(1) As used in this section:

(a) "Alcohol-related law enforcement officer" means a law enforcement officer employed by the Department of Public Safety that has as a primary responsibility:

- (i) the enforcement of this title; or
- (ii) the enforcement of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

(b) "Enforcement ratio" is the number calculated as follows:

(i) determine the quotient equal to the sum of the total number of quota retail licenses available and the total number of licensed premises operating under a master full-service restaurant license or under a master limited-service restaurant license divided by the total number of alcohol-related law enforcement officers; and

(ii) round the number determined in accordance with Subsection (1)(b)(i) up to the nearest whole number.

(c) "Quota retail license" means:

- (i) a full-service restaurant license;
- (ii) a limited-service restaurant license;
- (iii) a club license;
- (iv) an on-premise banquet license;
- (v) an on-premise beer retailer operating as a tavern; and
- (vi) a reception center license.

(d) "Total number of alcohol-related law enforcement officers" means the total number of positions designated as alcohol-related law enforcement officers that are funded as of a specified date as certified by the Department of Public Safety to the department.

(e) "Total number of quota retail licenses available" means the number calculated by:

(i) determining as of a specified date for each quota retail license the number of licenses that the commission may not exceed calculated by dividing the population of

the state by the number specified in the relevant provision for the quota retail license; and

(ii) adding together the numbers determined under Subsection (1)(e)(i).

(2) (a) Beginning on July 1, 2012, the department shall annually determine the enforcement ratio as of July 1 of that year.

(b) If, beginning on July 1, 2012, the enforcement ratio is greater than 52, the commission may not issue a quota retail license for the 12-month period beginning on the July 1 for which the enforcement ratio is greater than 52.

(c) Notwithstanding Subsection (2)(b), the commission may issue a quota retail license during the 12-month period described in Subsection (2)(b) beginning on the day on which a sufficient number of alcohol-related law enforcement officers are employed so that if the enforcement ratio is calculated, the enforcement ratio would be equal to or less than 52.

(d) Once the Department of Public Safety certifies under Subsection (1)(d) the total number of positions designated as alcohol-related law enforcement officers that are funded as of July 1, the Department of Public Safety may not use the funding for the designated alcohol-related law enforcement officers for a purpose other than funding those positions.

(3) For purposes of determining the number of state stores that the commission may establish or the number of package agencies or retail licenses that the commission may issue, the commission shall determine population by:

(a) the most recent United States decennial or special census; or

(b) another population determination made by the United States or state governments.

(4) The commission may not consider a retail license that meets the following conditions in determining the total number of licenses available for that type of retail license that the commission may issue at any time:

(a) the retail license was issued to a club licensee designated as a dining club as of July 1, 2011; and

(b) the dining club license is converted to another type of retail license in accordance with Section 32B-6-409.

Amended by Chapter 349, 2013 General Session

32B-1-202. Proximity to community location.

(1) For purposes of this section, "outlet" means:

(a) a state store;

(b) a package agency; or

(c) a retail licensee, except an airport lounge licensee.

(2) Except as otherwise provided in this section, the premises of an outlet may not be located:

(a) within 600 feet of a community location, as measured from the nearest entrance of the outlet by following the shortest route of ordinary pedestrian travel to the property boundary of the community location; or

(b) within 200 feet of a community location, measured in a straight line from the nearest entrance of the outlet to the nearest property boundary of the community

location.

(3) With respect to the location of an outlet, the commission may authorize a variance to reduce the proximity requirement of Subsection (2) if:

(a) when the variance reduces the proximity requirement of Subsection (2)(b), the community location at issue is:

(i) a public library; or

(ii) a public park;

(b) except with respect to a state store, the local authority gives its written consent to the variance;

(c) the commission finds that alternative locations for locating that type of outlet in the community are limited;

(d) a public hearing is held in the city, town, or county, and when practical in the neighborhood concerned;

(e) after giving full consideration to the attending circumstances and the policies stated in Subsections 32B-1-103(3) and (4), the commission determines that locating the outlet in that location would not be detrimental to the public health, peace, safety, and welfare of the community;

(f) (i) the community location governing authority gives its written consent to the variance; or

(ii) if the community location governing authority does not give its written consent to a variance, the commission finds the following for a state store, or if the outlet is a package agency or retail licensee, the commission finds that the applicant establishes the following:

(A) there is substantial unmet public demand to consume an alcoholic product:

(I) within the geographic boundary of the local authority in which the outlet is to be located; and

(II) for an outlet that is a retail licensee, in a public setting;

(B) there is no reasonably viable alternative for satisfying the substantial unmet demand other than through locating that type of outlet in that location; and

(C) there is no reasonably viable alternative location within the geographic boundary of the local authority in which the outlet is to be located for locating that type of outlet to satisfy the unmet demand.

(4) With respect to the premises of a package agency or retail licensee that undergoes a change of ownership, the commission may waive or vary the proximity requirements of Subsection (2) in considering whether to issue the package agency or same type of retail license to the new owner of the premises if:

(a) the premises previously received a variance reducing the proximity requirement of Subsection (2)(a);

(b) the premises received a variance reducing the proximity requirement of Subsection (2)(b) on or before May 4, 2008; or

(c) a variance from proximity requirements was otherwise allowed under this title.

(5) Nothing in this section prevents the commission from considering the proximity of an educational, religious, and recreational facility, or any other relevant factor in reaching a decision on a proposed location of an outlet.

Enacted by Chapter 276, 2010 General Session

32B-1-203. Licensee compliance with other laws.

(1) A licensee and a person applying for a license shall comply with the applicable federal and state laws pertaining to payment of taxes and contributions to unemployment and insurance funds to which the licensee or person may be subject.

(2) The commission:

- (a) may not issue a license to a person who violates this section; and
- (b) may suspend, revoke, or not renew the license of a licensee who violates this section.

Amended by Chapter 307, 2011 General Session

32B-1-204. Powers of local authority.

(1) If this title expressly addresses an issue related to alcoholic product control in this state, a local authority may not regulate in relation to that issue except when a local authority is expressly granted regulatory authority to regulate the issue by this title.

(2) If this title does not expressly address an issue related to alcoholic product control, a local authority may regulate that issue if the regulation:

- (a) is of the sale, offer for sale, furnishing, or consumption of an alcoholic product; and
- (b) does not conflict with this title.

Enacted by Chapter 276, 2010 General Session

32B-1-205. Falsifying or taking other actions with records prohibited.

(1) A person required to make or maintain a record under this title or rules of the commission, or a person acting for that person, may not knowingly forge, falsify, alter, cancel, destroy, conceal, or remove the record for the purpose of deceiving the commission, a commissioner, the director, the department, a department employee, or a law enforcement officer.

(2) A violation of this section may result in:

- (a) disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, if the person who violates this section is a person subject to administrative action; or
- (b) criminal prosecution if the violation is a criminal offense under Chapter 4, Criminal Offenses and Procedure Act.

Enacted by Chapter 276, 2010 General Session

32B-1-206. Advertising prohibited -- Exceptions.

(1) (a) The department may not advertise liquor, except:

- (i) the department may provide for an appropriate sign in the window or on the front of a state store or package agency denoting that it is a state authorized liquor retail facility;
- (ii) the department or a package agency may provide a printed price list to the

public;

(iii) the department may authorize the use of price posting and floor stacking of liquor within a state store;

(iv) subject to Subsection (1)(b), the department may provide a listing of the address and telephone number of a state store in one or more printed or electronic directories available to the general public; and

(v) subject to Subsection (1)(b), a package agency may provide a listing of its address and telephone number in one or more printed or electronic directories available to the general public.

(b) A listing under Subsection (1)(a)(iv) or (v) in the business or yellow pages of a telephone directory may not be displayed in an advertisement or other promotional format.

(2) (a) The department may not advertise an alcoholic product on a billboard.

(b) A package agency may not advertise an alcoholic product on a billboard, except to the extent allowed by the commission by rule.

(3) (a) The department may not display liquor or a price list in a window or showcase visible to passersby.

(b) A package agency may not display liquor or a price list in a window or showcase visible to passersby, except to the extent allowed by the commission by rule.

(4) Except to the extent prohibited by this title, the advertising of an alcoholic product is allowed under guidelines established by the commission by rule.

(5) The advertising or use of any means or media to offer an alcoholic product to the general public without charge is prohibited.

Renumbered and Amended by Chapter 307, 2011 General Session

32B-1-207. Calculation of ratio of gross receipts of food to alcoholic product.

In calculating the annual gross receipts of a retail license or sublicense for purposes of determining the percentage of gross receipts from the sale, offer for sale, or furnishing of food or an alcoholic product, a retail licensee may not include in the calculation the money from the sale of a bottle of wine by the retail licensee or under a sublicense that is in excess of \$250.

Enacted by Chapter 334, 2011 General Session

32B-1-301. Title.

This part is known as "Qualifications and Background."

Enacted by Chapter 276, 2010 General Session

32B-1-302. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-1-303. Qualifications related to employment with the department.

(1) The department may not employ a person if that person has been convicted of:

- (a) a felony under a federal law or state law;
- (b) a violation of a federal law, state law, or local ordinance concerning the sale, offer for sale, warehousing, manufacture, distribution, transportation, or adulteration of an alcoholic product;
- (c) a crime involving moral turpitude; or
- (d) on two or more occasions within the five years before the day on which the department employs the person, driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs.

(2) The director may terminate a department employee or take other disciplinary action consistent with Title 67, Chapter 19, Utah State Personnel Management Act, if:

(a) after the day on which the department employs the department employee, the department employee is found to have been convicted of an offense described in Subsection (1) before being employed by the department; or

(b) on or after the day on which the department employs the department employee, the department employee:

- (i) is convicted of an offense described in Subsection (1)(a), (b), or (c); or
- (ii) (A) is convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs; and

(B) was convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs within five years before the day on which the person is convicted of the offense described in Subsection (2)(b)(ii)(A).

(3) The director may immediately suspend a department employee for the period during which a criminal matter is being adjudicated if the department employee:

(a) is arrested on a charge for an offense described in Subsection (1)(a), (b), or (c); or

(b) (i) is arrested on a charge for the offense of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs; and

(ii) was convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs within five years before the day on which the person is arrested on a charge described in Subsection (3)(b)(i).

Enacted by Chapter 276, 2010 General Session

32B-1-304. Qualifications for a package agency, license, or permit -- Minors.

(1) (a) The commission may not issue a package agency, license, or permit to a person who has been convicted of:

- (i) a felony under a federal law or state law;
- (ii) a violation of a federal law, state law, or local ordinance concerning the sale, offer for sale, warehousing, manufacture, distribution, transportation, or adulteration of an alcoholic product;
- (iii) a crime involving moral turpitude; or
- (iv) on two or more occasions within the five years before the day on which the

package agency, license, or permit is issued, driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs.

(b) If the person is a partnership, corporation, or limited liability company, the proscription under Subsection (1)(a) applies if any of the following has been convicted of an offense described in Subsection (1)(a):

- (i) a partner;
- (ii) a managing agent;
- (iii) a manager;
- (iv) an officer;
- (v) a director;
- (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or
- (vii) a member who owns at least 20% of the limited liability company.

(c) The proscription under Subsection (1)(a) applies if a person who is employed to act in a supervisory or managerial capacity for a package agency, licensee, or permittee has been convicted of an offense described in Subsection (1)(a).

(2) The commission may immediately suspend or revoke a package agency, license, or permit, and terminate a package agency agreement, if a person described in Subsection (1):

(a) after the day on which the package agency, license, or permit is issued, is found to have been convicted of an offense described in Subsection (1)(a) before the package agency, license, or permit is issued; or

(b) on or after the day on which the package agency, license, or permit is issued:

- (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or
- (ii) (A) is convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs; and

(B) was convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs within five years before the day on which the person is convicted of the offense described in Subsection (2)(b)(ii)(A).

(3) The director may take emergency action by immediately suspending the operation of the package agency, licensee, or permittee for the period during which a criminal matter is being adjudicated if a person described in Subsection (1):

(a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii); or

(b) (i) is arrested on a charge for the offense of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs; and

(ii) was convicted of driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs within five years before the day on which the person is arrested on a charge described in Subsection (3)(b)(i).

(4) (a) (i) The commission may not issue a package agency, license, or permit to a person who has had any type of agency, license, or permit issued under this title revoked within the last three years.

(ii) The commission may not issue a package agency, license, or permit to a partnership, corporation, or limited liability company if a partner, managing agent, manager, officer, director, stockholder who holds at least 20% of the total issued and

outstanding stock of the corporation, or member who owns at least 20% of the limited liability company is or was:

(A) a partner or managing agent of a partnership that had any type of agency, license, or permit issued under this title revoked within the last three years;

(B) a managing agent, officer, director, or stockholder who holds or held at least 20% of the total issued and outstanding stock of any corporation that had any type of agency, license, or permit issued under this title revoked within the last three years; or

(C) a manager or member who owns or owned at least 20% of a limited liability company that had any type of agency, license, or permit issued under this title revoked within the last three years.

(b) The commission may not issue a package agency, licence, or permit to a partnership, corporation, or limited liability company if any of the following had any type of agency, license, or permit issued under this title revoked while acting in that person's individual capacity within the last three years:

(i) a partner or managing agent of a partnership;

(ii) a managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of a corporation; or

(iii) a manager or member who owns at least 20% of a limited liability company.

(c) The commission may not issue a package agency, license, or permit to a person acting in an individual capacity if that person was:

(i) a partner or managing agent of a partnership that had any type of agency, license, or permit issued under this title revoked within the last three years;

(ii) a managing agent, officer, director, or stockholder who held at least 20% of the total issued and outstanding stock of a corporation that had any type of agency, license, or permit issued under this title revoked within the last three years; or

(iii) a manager or member who owned at least 20% of the limited liability company that had any type of agency, license, or permit issued under this title revoked within the last three years.

(5) (a) The commission may not issue a package agency, license, or permit to a minor.

(b) The commission may not issue a package agency, license, or permit to a partnership, corporation, or limited liability company if any of the following is a minor:

(i) a partner or managing agent of the partnership;

(ii) a managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or

(iii) a manager or member who owns at least 20% of the limited liability company.

(6) If a package agent, licensee, or permittee no longer possesses the qualifications required by this title for obtaining a package agency, license, or permit, the commission may terminate the package agency agreement, or revoke the license or permit.

Enacted by Chapter 276, 2010 General Session

32B-1-305. Requirement for a criminal background check.

(1) The department shall require an individual listed in Subsection (2) to, in

accordance with this part:

- (a) submit a fingerprint card in a form acceptable to the department; and
- (b) consent to a fingerprint criminal background check by:
 - (i) the Utah Bureau of Criminal Identification; and
 - (ii) the Federal Bureau of Investigation.
- (2) The following shall comply with Subsection (1):
 - (a) an individual applying for employment with the department if:
 - (i) the department makes the decision to offer the individual employment with the department; and
 - (ii) once employed, the individual will receive benefits;
 - (b) an individual applying to the commission to operate a package agency;
 - (c) an individual applying to the commission for a license;
 - (d) an individual who with regard to an entity that is applying to the commission to operate a package agency or for a license is:
 - (i) a partner;
 - (ii) a managing agent;
 - (iii) a manager;
 - (iv) an officer;
 - (v) a director;
 - (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of a corporation;
 - (vii) a member who owns at least 20% of a limited liability company; or
 - (viii) an individual employed to act in a supervisory or managerial capacity; or
 - (e) an individual who becomes involved with an entity that operates a package agency or holds a license, if the individual is in a capacity listed in Subsection (2)(d) on or after the day on which the entity:
 - (i) is approved to operate a package agency; or
 - (ii) is licensed by the commission.
- (3) The department shall require compliance with Subsection (2)(e) as a condition of an entity's:
 - (a) continued operation of a package agency; or
 - (b) renewal of a license.
- (4) The department may require as a condition of continued employment that a department employee:
 - (a) submit a fingerprint card in a form acceptable to the department; and
 - (b) consent to a fingerprint criminal background check by:
 - (i) the Utah Bureau of Criminal Identification; and
 - (ii) the Federal Bureau of Investigation.

Enacted by Chapter 276, 2010 General Session

32B-1-306. Use of information from a criminal background check.

The commission or department may use information obtained pursuant to Section 32B-1-305 only for one or more of the following purposes:

- (1) enforcing this title;
- (2) determining whether an individual is convicted of any of the following

offenses that disqualify the individual under this title from acting in a capacity described in Subsection 32B-1-305(2):

- (a) a felony under federal law or state law;
- (b) a violation of a federal law, state law, or local ordinance concerning the sale, offer for sale, warehousing, manufacture, distribution, transportation, or adulteration of an alcoholic product;
- (c) a crime involving moral turpitude; or
- (d) on two or more occasions within the previous five years, driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs;
- (3) determining whether an individual fails to accurately disclose the individual's criminal history on an application or document filed with the department or commission;
- (4) approving or denying an application for employment with the department;
- (5) taking disciplinary action against a department employee, including possible termination of employment;
- (6) issuing or denying an application to operate a package agency;
- (7) issuing or denying an application for a license;
- (8) issuing or denying the renewal of a package agency agreement;
- (9) issuing or denying the renewal of a license;
- (10) suspending the operation of a package agency;
- (11) terminating a package agency contract; or
- (12) suspending or revoking a license.

Amended by Chapter 307, 2011 General Session

32B-1-307. Criminal background check procedure.

(1) (a) An individual described in Subsections 32B-1-305(2)(b) through (e) shall submit a fingerprint card at the expense of the individual.

(b) The department shall pay the expense of obtaining a fingerprint card required of:

- (i) an individual applying for employment with the department; or
- (ii) a department employee.

(2) (a) The department shall obtain information from a criminal history record maintained by the Utah Bureau of Criminal Identification pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, for a purpose outlined in Section 32B-1-306.

(b) An individual described in Subsections 32B-1-305(2)(b) through (e) shall pay to the department the expense of obtaining the criminal history record described in Subsection (2)(a).

(c) The department shall pay the expense of obtaining the criminal history record required for:

- (i) an individual applying for employment with the department; or
- (ii) a department employee.

(3) (a) The department shall submit a fingerprint card obtained under Section 32B-1-305 of an individual who has not resided in the state for at least two years before the day on which the fingerprint card is submitted to the Utah Bureau of Criminal Identification to be forwarded to the Federal Bureau of Investigation for a nationwide

criminal history record check.

(b) An individual described in Subsections 32B-1-305(2)(b) through (e) shall pay to the department the expense of obtaining the criminal history record described in Subsection (3)(a).

(c) The department shall pay the expense of obtaining the criminal history record required for:

- (i) an individual applying for employment with the department; or
- (ii) a department employee.

(4) The department shall pay the Utah Bureau of Criminal Identification the costs incurred in providing the department criminal background information.

(5) (a) The following may not disseminate a criminal history record obtained under this part to any person except for a purpose described in Section 32B-1-306:

- (i) the commission;
- (ii) a commissioner;
- (iii) the director;
- (iv) the department; or
- (v) a department employee.

(b) (i) Notwithstanding Subsection (5)(a), a criminal history record obtained under this part may be provided by the department to the individual who is the subject of the criminal history record.

(ii) The department shall provide an individual who is the subject of a criminal history record and who requests the criminal history record an opportunity to:

- (A) review the criminal history record; and
- (B) respond to information in the criminal history record.

(6) If an individual described in Subsection 32B-1-305(2) is determined to be disqualified under Subsection 32B-1-306(2)(b), the department shall provide the individual with:

- (a) notice of the reason for the disqualification; and
- (b) an opportunity to respond to the disqualification.

(7) The department shall maintain the following in one or more separate files so that they may be accessed only for a purpose under Section 32B-1-306:

- (a) a fingerprint card submitted under this part; and
- (b) a criminal history record received from:
 - (i) the Utah Bureau of Criminal Identification; and
 - (ii) the Federal Bureau of Investigation.

Enacted by Chapter 276, 2010 General Session

32B-1-401. Title.

This part is known as the "Proof of Age Act."

Enacted by Chapter 276, 2010 General Session

32B-1-402. Definitions.

As used in this part:

- (1) "Authorized person" means a person authorized by law to sell or otherwise

handle an alcoholic product.

(2) "Restricted area" means a place where an alcoholic product is sold or consumed, but where under this title a minor is not permitted.

(3) "Statement of age" means a statement signed under Section 32B-1-405 verifying the age of the person signing the statement.

Amended by Chapter 334, 2011 General Session

32B-1-403. Unlawful transfer or use of proof of age -- False information.

(1) (a) It is unlawful for a person to transfer that person's proof of age to another person to aid that person:

- (i) in procuring an alcoholic product;
- (ii) in gaining admittance to a restricted area; or
- (iii) in obtaining employment that under this title may not be obtained by a minor.

(b) A person who permits that person's proof of age to be used by another for a purpose stated in Subsection (1)(a) is guilty of a class B misdemeanor.

(2) (a) It is unlawful for a person to use a proof of age containing false information with the intent to:

- (i) procure an alcoholic product;
- (ii) gain admittance to a restricted area; or
- (iii) obtain employment that under this title may not be obtained by a minor.

(b) Except as provided in Section 32B-4-411, a person who violates this Subsection (2) is guilty of a class A misdemeanor.

Enacted by Chapter 276, 2010 General Session

32B-1-404. Presentation of proof of age upon request.

(1) To obtain one or more of the following, an individual shall present proof of age at the request of a person listed in Subsection (2):

- (a) an alcoholic product;
- (b) admittance to a restricted area; or
- (c) employment that under this title may not be obtained by a minor.

(2) To determine whether the individual described in Subsection (1) is 21 years of age, the following may request a person described in Subsection (1) to present proof of age:

- (a) an authorized person;
- (b) a peace officer;
- (c) a representative of the State Bureau of Investigation of the Department of Public Safety, established in Section 53-10-301; or
- (d) an authorized department employee.

Enacted by Chapter 276, 2010 General Session

32B-1-405. Additional requirements when age is in question.

(1) (a) In addition to requesting the presentation of proof of age under Section 32B-1-404, an authorized person shall require an individual whose age is in question to

sign a statement of age on the form provided under Subsection (1)(b) that includes:

- (i) the date the statement of age is signed; and
- (ii) the number assigned to the individual's proof of age by the issuing authority.

(b) At the request of a retail licensee, the commissioner of public safety shall provide to a retail licensee the form for the statement of age described in this Subsection (1).

(2) (a) An authorized person shall:

(i) file in alphabetical order a statement of age obtained under Subsection (1) by no later than the close of business on the day on which the statement of age is executed; and

(ii) maintain a statement of age on file for three years.

(b) A statement of age is subject to examination by:

(i) a peace officer;

(ii) a representative of the State Bureau of Investigation of the Department of Public Safety, established in Section 53-10-301; or

(iii) an authorized department employee.

Enacted by Chapter 276, 2010 General Session

32B-1-406. Acceptance of identification.

(1) An authorized person may accept as evidence of the legal age of the individual presenting the following:

(a) proof of age; or

(b) if a statement of age is required under Section 32B-1-405:

(i) proof of age; and

(ii) a statement of age.

(2) A statement of age, if properly completed, signed, and filed in accordance with Section 32B-1-405, may be offered as a defense in a case when there is at issue the legality of:

(a) selling, offering for sale, or furnishing an alcoholic product to the individual who signed the statement of age;

(b) admitting the individual who signed the statement of age into a restricted area; or

(c) allowing the individual who signed the statement of age to be employed in employment that under this title may not be obtained by a minor.

(3) An authorized person may not accept a driving privilege card issued in accordance with Section 53-3-207 as evidence of the legal age of an individual.

Enacted by Chapter 276, 2010 General Session

32B-1-407. Verification of proof of age by applicable licensees.

(1) As used in this section, "applicable licensee" means:

(a) a dining club;

(b) a social club; or

(c) a tavern.

(2) Notwithstanding any other provision of this part, an applicable licensee shall

require that an authorized person for the applicable licensee verify proof of age as provided in this section.

(3) An authorized person is required to verify proof of age under this section before an individual who appears to be 35 years of age or younger:

- (a) gains admittance to the premises of a social club licensee or tavern; or
- (b) procures an alcoholic product on the premises of a dining club licensee.

(4) To comply with Subsection (3), an authorized person shall:

- (a) request the individual present proof of age; and
- (b) (i) verify the validity of the proof of age electronically under the verification program created in Subsection (5); or
- (ii) if the proof of age cannot be electronically verified as provided in Subsection (4)(b)(i), request that the individual comply with a process established by the commission by rule.

(5) The commission shall establish by rule an electronic verification program that includes the following:

(a) the specifications for the technology used by the applicable licensee to electronically verify proof of age, including that the technology display to the person described in Subsection (2) no more than the following for the individual who presents the proof of age:

- (i) the name;
- (ii) the age;
- (iii) the number assigned to the individual's proof of age by the issuing authority;
- (iv) the birth date;
- (v) the gender; and
- (vi) the status and expiration date of the individual's proof of age; and

(b) the security measures that shall be used by an applicable licensee to ensure that information obtained under this section is:

- (i) used by the applicable licensee only for purposes of verifying proof of age in accordance with this section; and
- (ii) retained by the applicable licensee for seven days after the day on which the applicable licensee obtains the information.

(6) (a) An applicable licensee may not disclose information obtained under this section except as provided under this title.

(b) Information obtained under this section is considered a record for any purpose under Chapter 5, Part 3, Retail Licensee Operational Requirements.

Amended by Chapter 297, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-1-408. Penalty.

(1) Unless otherwise provided in this title, including Section 32B-4-411, a person who violates this part is guilty of a class B misdemeanor.

(2) A person is not subject to a penalty for a violation of this part if it is proved to the commission or the court hearing the matter that the person charged with the violation acted in good faith.

Enacted by Chapter 276, 2010 General Session

32B-1-501. Title.

This part is known as the "Attire, Conduct, and Entertainment Act."

Enacted by Chapter 276, 2010 General Session

32B-1-502. Purpose -- Application to other laws.

(1) This part establishes reasonable and uniform time, place, and manner of operation requirements relating to attire, conduct, and sexually oriented entertainers on premises or at an event at which an alcoholic product is sold, offered for sale, furnished, or allowed to be consumed under a retail license or permit issued by the commission so as to:

(a) reduce the adverse secondary effects that the attire, conduct, and sexually oriented entertainers may have upon communities of this state; and

(b) protect the health, peace, safety, welfare, and morals of the residents of communities of this state.

(2) Nothing in this part allows the showing or display of any matter that is contrary to:

(a) applicable federal or state statutes prohibiting obscenity; or

(b) state statutes relating to lewdness or indecent public displays.

(3) A local authority may be more restrictive of attire, conduct, or sexually oriented entertainers of the type prohibited in this part.

Enacted by Chapter 276, 2010 General Session

32B-1-503. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-1-504. General requirements on attire and conduct.

The following attire and conduct on premises or at an event regulated by the commission under this title are considered contrary to the public health, peace, safety, welfare, and morals, and are prohibited:

(1) employing or using a person in the sale, offer for sale, or furnishing of an alcoholic product while the person is in:

(a) a state of nudity;

(b) a state of seminudity; or

(c) performance attire or clothing that exposes to view any portion of:

(i) the female breast below the top of the areola; or

(ii) the cleft of the buttocks;

(2) employing or using the services of a person to mingle with patrons while the person is in:

(a) a state of nudity;

(b) a state of seminudity; or

- (c) performance attire or clothing that exposes to view any portion of:
 - (i) the female breast below the top of the areola; or
 - (ii) the cleft of the buttocks;
- (3) encouraging or permitting a person to:
 - (a) engage in or simulate an act of:
 - (i) sexual intercourse;
 - (ii) masturbation;
 - (iii) sodomy;
 - (iv) bestiality;
 - (v) oral copulation;
 - (vi) flagellation; or
 - (vii) a sexual act that is prohibited by Utah law; or
 - (b) touch, caress, or fondle the breast, buttocks, anus, or genitals of any other person;
- (4) permitting a person to wear or use a device or covering that:
 - (a) is exposed to view; and
 - (b) simulates all or any portion of the human genitals, anus, pubic area, or female breast;
- (5) permitting a person to use an artificial device or inanimate object to depict an act prohibited by this section;
- (6) permitting a person to remain on premises or at an event who exposes to public view any portion of that person's:
 - (a) genitals, pubic area, or anus; or
 - (b) in the case of a female, the areola and nipple of the breast; or
- (7) showing a film, still picture, electronic reproduction, or other visual reproduction depicting:
 - (a) an act or simulated act of:
 - (i) sexual intercourse;
 - (ii) masturbation;
 - (iii) sodomy;
 - (iv) bestiality;
 - (v) oral copulation;
 - (vi) flagellation; or
 - (vii) a sexual act that is prohibited by Utah law;
 - (b) a person being touched, caressed, or fondled on the breast, buttocks, anus, or genitals;
 - (c) a scene wherein an artificial device or inanimate object is employed to depict, or a drawing is employed to portray, an act prohibited by this section; or
 - (d) a scene wherein a person displays the genitals or anus.

Enacted by Chapter 276, 2010 General Session

32B-1-505. Sexually oriented entertainer.

- (1) Subject to the requirements of this part, live entertainment is permitted on premises or at an event regulated by the commission.
- (2) Notwithstanding Subsection (1), a retail licensee or permittee may not permit

a person to:

- (a) appear or perform in a state of nudity;
 - (b) perform or simulate an act of:
 - (i) sexual intercourse;
 - (ii) masturbation;
 - (iii) sodomy;
 - (iv) bestiality;
 - (v) oral copulation;
 - (vi) flagellation; or
 - (vii) a sexual act that is prohibited by Utah law; or
 - (c) touch, caress, or fondle the breast, buttocks, anus, or genitals.
- (3) A sexually oriented entertainer may perform in a state of seminudity:
- (a) only in:
 - (i) a tavern; or
 - (ii) a social club license premises; and
 - (b) only if:
 - (i) the windows, doors, and other apertures to the premises are darkened or otherwise constructed to prevent anyone outside the premises from seeing the performance; and
 - (ii) the outside entrance doors of the premises remain unlocked.
- (4) A sexually oriented entertainer may perform only upon a stage or in a designated performance area that is:
- (a) approved by the commission in accordance with rules made by the commission;
 - (b) configured so as to preclude a patron from:
 - (i) touching the sexually oriented entertainer; or
 - (ii) placing any money or object on or within the performance attire or the person of the sexually oriented entertainer; and
 - (c) configured so as to preclude the sexually oriented entertainer from touching a patron.
- (5) A sexually oriented entertainer may not touch a patron:
- (a) during the sexually oriented entertainer's performance; or
 - (b) while the sexually oriented entertainer is dressed in performance attire.
- (6) A sexually oriented entertainer, while in the portion of the premises used by patrons, shall be dressed in opaque clothing which covers and conceals the sexually oriented entertainer's performance attire from the top of the breast to the knee.
- (7) A patron may not be on the stage or in the performance area while a sexually oriented entertainer is appearing or performing on the stage or in the performance area.
- (8) A patron may not:
- (a) touch a sexually oriented entertainer:
 - (i) during the sexually oriented entertainer's performance; or
 - (ii) while the sexually oriented entertainer is dressed in performance attire; or
 - (b) place money or any other object on or within the performance attire or the person of the sexually oriented entertainer.
- (9) A minor may not be on premises described in Subsection (3).

(10) A person who appears or performs for the entertainment of patrons on premises or at an event regulated by the commission that is not a tavern or social club licensee:

- (a) may not appear or perform in a state of nudity or a state of seminudity; and
- (b) may appear or perform in opaque clothing that completely covers the person's genitals, pubic area, and anus if the covering:
 - (i) is not less than the following at its widest point:
 - (A) four inches coverage width in the front of the human body; and
 - (B) five inches coverage width in the back of the human body;
 - (ii) does not taper to less than one inch wide at the narrowest point; and
 - (iii) if covering a female, completely covers the breast below the top of the areola.

Amended by Chapter 297, 2011 General Session

32B-1-506. Compliance -- Administrative enforcement.

(1) A retail licensee, a permittee, and staff of a licensee or permittee shall comply with this part.

(2) Failure to comply with this part may result in a disciplinary proceeding pursuant to Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (a) a licensee or permittee;
- (b) staff of the licensee or permittee;
- (c) both a licensee and staff of the licensee; or
- (d) both a permittee and staff of the permittee.

Enacted by Chapter 276, 2010 General Session

32B-1-601. Title.

This part is known as the "Malted Beverage Act."

Enacted by Chapter 276, 2010 General Session

32B-1-602. Definitions.

As used in this part:

- (1) "Malted beverage" means:
 - (a) beer;
 - (b) a flavored malt beverage; and
 - (c) heavy beer.
- (2) "Packaging" means the outer packaging that is visible to a consumer such as a carton, case, or other wrapper of a container.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-1-603. Power of the commission and department to classify flavored malt beverages.

(1) The commission and department shall regulate a flavored malt beverage as liquor.

(2) (a) The department shall make available to the public on the Internet a list of the flavored malt beverages authorized to be sold in this state as liquor.

(b) The list described in Subsection (2)(a) shall be updated at least quarterly.

(3) (a) A manufacturer shall file, under penalty of perjury, a report with the department listing each flavored malt beverage manufactured by the manufacturer that the manufacturer wants to distribute in this state subject to the manufacturer holding:

(i) a brewery manufacturing license issued in accordance with Chapter 11, Part 5, Brewery Manufacturing License; or

(ii) a certificate of approval.

(b) A manufacturer may not distribute or sell in this state a flavored malt beverage if the manufacturer does not list the flavored malt beverage in a filing with the department in accordance with this Subsection (3) before distributing or selling the flavored malt beverage.

(4) The department may require a manufacturer of a flavored malt beverage to provide the department with a copy of the following filed with the federal Alcohol and Tobacco Tax and Trade Bureau, pursuant to 27 C.F.R. Sec. 25.55:

(a) a statement of process; or

(b) a formula.

(5) (a) A manufacturer of an alcoholic product that the department is classifying or proposes to classify as a flavored malt beverage may submit evidence to the department that its alcoholic product should not be treated as liquor under this section because the alcoholic product:

(i) is obtained by fermentation, infusion, or decoction of a malted grain;

(ii) is produced by processing, filtration, or another method of manufacture that is generally recognized as a traditional process in the production of beer as described in 27 C.F.R. Sec. 25.55;

(iii) does not have added to it a flavor or other ingredient containing alcohol, except for a hop extract; and

(iv) (A) is not one for which the producer is required to file a formula for approval with the federal Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 C.F.R. Sec. 25.55; or

(B) is exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.

(b) The department shall review the evidence submitted by the manufacturer under this Subsection (5).

(c) The department shall make available to the public on the Internet a list of the alcoholic products authorized under this Subsection (5) to be sold as beer in this state.

(d) A decision of the department under this Subsection (5) may be appealed to the commission.

Enacted by Chapter 276, 2010 General Session

32B-1-604. Requirements for labeling and packaging -- Authority of the commission and department.

(1) A manufacturer may not distribute or sell a malted beverage:

- (a) unless the label and packaging of the malted beverage:
 - (i) complies with the federal label requirements of 27 C.F.R. Parts 7, 13, and 16; and
 - (ii) clearly gives notice to the public that the malted beverage is an alcoholic product; and
- (b) until the day on which the department in accordance with this title and rules of the commission approves the label and packaging of the malted beverage.
- (2) The department shall review the label and packaging of a malted beverage to ensure that the label and packaging meet the requirements of Subsection (1)(a).
- (3) A manufacturer may comply with the requirement of Subsection (1)(a)(ii) by including on a label and packaging for a malted beverage any of the following terms:
 - (a) beer;
 - (b) ale;
 - (c) porter;
 - (d) stout;
 - (e) lager;
 - (f) lager beer; or
 - (g) another class or type designation commonly applied to a malted beverage that conveys by a recognized term that the product contains alcohol.

Enacted by Chapter 276, 2010 General Session

32B-1-605. General procedure for approval.

- (1) To obtain approval of the label and packaging of a malted beverage, the manufacturer of the malted beverage shall submit an application to the department for approval.
- (2) The application described in Subsection (1) shall be on a form approved by the department and include the following:
 - (a) a copy of a federal certificate of label approval from the Department of Treasury, Tax and Trade Bureau, for each brand and label for which the manufacturer is seeking approval;
 - (b) a complete set of original labels for each size of container of the malted beverage;
 - (c) a description of the size of the container on which a label will be placed;
 - (d) a description of each type of container of the malted beverage; and
 - (e) a description of any packaging for the malted beverage.
- (3) The department may assess a reasonable fee for reviewing a label and packaging for approval.
- (4) (a) The department shall notify a manufacturer within 30 days after the day on which the manufacturer submits an application whether the label and packaging is approved or denied.
- (b) If the department determines that an unusual circumstance requires additional time, the department may extend the time period described in Subsection (4)(a).
- (5) A manufacturer shall obtain the approval of the department of a revision of a previously approved label and packaging before a malted beverage using the revised

label and packaging may be distributed or sold in this state.

(6) (a) The department may revoke a label and packaging previously approved upon a finding that the label and packaging is not in compliance with this title or rules of the commission.

(b) The department shall notify the person who applies for the approval of a label and packaging at least five business days before the day on which a label and packaging approval is considered revoked.

(c) After receiving notice under Subsection (6)(b), a manufacturer may present written argument or evidence to the department on why the revocation should not occur.

(7) A manufacturer that applies for approval of a label and packaging may appeal a denial or revocation of a label and packaging approval to the commission.

Amended by Chapter 307, 2011 General Session

Amended by Chapter 334, 2011 General Session

32B-1-606. Special procedure for flavored malt beverages.

(1) If a flavored malt beverage is labeled or packaged in a manner that is similar to a label or packaging used for a nonalcoholic beverage, a manufacturer of the flavored malt beverage may not distribute or sell the flavored malt beverage in this state until the day on which the manufacturer receives approval of the labeling and packaging from the department in accordance with:

(a) Sections 32B-1-604 and 32B-1-605; and

(b) this section.

(2) The department may not approve the labeling and packaging of a flavored malt beverage described in Subsection (1) unless in addition to the requirements of Section 32B-1-604 the labeling and packaging complies with the following:

(a) The label on the flavored malt beverage shall bear a prominently displayed label or a firmly affixed sticker that provides the following information:

(i) the statement:

(A) "alcoholic beverage"; or

(B) "contains alcohol"; and

(ii) the alcohol content of the flavored malt beverage.

(b) Packaging of a flavored malt beverage shall prominently include, either imprinted on the packaging or imprinted on a sticker firmly affixed to the packaging, the statement:

(i) "alcoholic beverage"; or

(ii) "contains alcohol".

(c) A statement required by Subsection (2)(a) or (b) shall appear in a format required by rule made by the commission.

(d) A statement of alcohol content required by Subsection (2)(a)(ii):

(i) shall state the alcohol content as a percentage of alcohol by volume or by weight;

(ii) may not use an abbreviation, but shall use the complete words "alcohol," "volume," or "weight"; and

(iii) shall be in a format required by rule made by the commission.

(3) The department may reject a label or packaging that appears designed to obscure the information required by Subsection (2).

(4) To determine whether a flavored malt beverage is described in Subsection (1) and subject to this section, the department may consider in addition to other factors one or more of the following factors:

(a) whether the coloring, carbonation, and packaging of the flavored malt beverage:

(i) is similar to those of a nonalcoholic beverage or product; or

(ii) can be confused with a nonalcoholic beverage;

(b) whether the flavored malt beverage possesses a character and flavor distinctive from a traditional malted beverage;

(c) whether the flavored malt beverage:

(i) is prepackaged;

(ii) contains high levels of caffeine and other additives; and

(iii) is marketed as a beverage that is specifically designed to provide energy;

(d) whether the flavored malt beverage contains added sweetener or sugar substitutes; or

(e) whether the flavored malt beverage contains an added fruit flavor or other flavor that masks the taste of a traditional malted beverage.

Enacted by Chapter 276, 2010 General Session

32B-1-607. Rulemaking authority.

The commission may adopt rules necessary to implement this part.

Enacted by Chapter 276, 2010 General Session

32B-1-608. Disciplinary proceeding for violation.

A person who violates this part is subject to a disciplinary proceeding under Chapter 3, Disciplinary Actions and Enforcement Act.

Enacted by Chapter 276, 2010 General Session